IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 572 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESH RAMJILAL SHARMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 572 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR AGP for Respondent Nos. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/06/2003

ORAL JUDGEMENT

1. Heard Mr.H.R.Prajapati, learned advocate for the petitioner and Mr.R.C.Kodekar, learned AGP for the respondents.

2. In this present petition, Rule has been issued by this Court [Coram : P.B.Majmudar,J.] on 24.01.2003, made it returnable after six weeks. In the present petition, the order of detention dated 03.05.2002 passed by the Commissioner of Police, Ahmedabad City under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter be referred to as "the PASA Act") against the petitioner - detenu and on 7/1/2003 the order of detention has been executed, the petitioner was detained in Junagadh District Jail. Against the petitioner, two offences have been registered at Prohibition Station being C.R.No.2348/2001 dated 20.08.2001 and C.R.No.945/2002 dated 19.04.2002 under the Prohibition Act. The proposal has been forwarded by the Sponsoring Authority to the Detaining Authority on 01.05.2002. The statements of the secret witnesses were recorded on 30.04.2002 and 01.05.2002. Both the statements of the secret witnesses were verified by the Detaining Authority on 02.05.2002 and the order of detention has been passed by the Detaining Authority on 03.05.2002. An affidavit-in-reply has filed by the Detaining Authority as well as the State Government. Both are taken on record. The copies of the same have been served to the present petitioner.

3. Mr.H.R.Prajapati, learned advocate for the petitioner has raised the contention at ground No.(u) at Page No.13 that looking to the facts, which are on record, the statements of the witness No.1 was recorded on 30.04.2002 and thereby the statement of the witness No.2 was recorded on 01.05.2002. Both the statements of the secret witnesses were verified by the Detaining Authority on 02.05.2002 and, thereafter, the order of detention has been passed on 03.05.2002. Mr.Prajapati has submitted that the decision of this Court, in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat and others, reported in 2000 (3) G.L.R. 2696, head note B at para-9 is covered to the facts of the case. Mr.Prajapati has also raised the contention that the verification of the statements of the secret witnesses by the Detaining Authority has been merely formality and the credibility of the witnesses have not been examined, whether the statements of the secret witnesses are correct or not. Therefore, the Detaining Authority has not applied his mind in respect of the statements of the secret witnesses, which were obtained by the Detaining Authority and verified by the Detaining Authority, whether these statements of the witnesses are correct or not. Mr.Prajapati has relied upon the decision rendered by this Court [Coram :

Ms.R.M.Doshit,J.] in Special Civil Application No.1692 of 1999 dated 07.07.1999 [Gopal Ramchandra Shahu through Ramchandra K Shahu Vs. State of Gujarat].

4. Mr.R.C.Kodekar, learned AGP for the respondents has submitted that the Detaining Authority has rightly been exercised its power to claim privilege under Section 9(2) of the PASA Act, by not disclosing the names and addresses of the secret witnesses. He has also submitted that the Sponsoring Authority was forwarded the proposal to the Detaining Authority on 01.05.2002 and on that occasion, the unregistered offences against the petitioner were also registered unanimously and the statements of the secret witnesses were also submitted to the Detaining Authority. Mr.Kodekar has also submitted that the Detaining Authority has rightly applied his mind and after considering the material, which was placed before him, the order of detention has been passed and the Detaining Authority has rightly considered all the material for passing the order of detention. According to him, the detention order has not vitiated by any error.

5. I have considered the submissions made by learned advocates for both the parties, though the order of detention has been challenged on various grounds. Looking to the facts of the present case, one ground is enough to vitiate the order of detention. The facts which are on record, are not disputed between the parties, that the statements of the secret witnesses were recorded on 30.04.2002 and 01.05.2002. Both the statements of the secret witnesses were verified by the Detaining Authority on 02.05.2002 and on the very next day, the order of detention has been passed. This aspect has examined by this Court in the aforesaid decision in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) [supra], the relevant discussion has made in para-9 of the aforesaid decision.

6. In respect to the submission made by Mr.Prajapati that the statements of the secret witnesses, which have been made before the Sponsoring Authority and brought to the notice by the secret witnesses about the unregistered offences against the petitioner. This fact is also narrated by the secret witnesses before the Detaining Authority and the Detaining Authority simply asked a question to the secret witnesses that whatever statements made before the Sponsoring Authority are correct or not and whether they have made statements are correct or not, the answer is given by the secret witnesses are that they have made earlier statements before the Sponsoring

Authority and those statements are correct. This merely a formal examination of the person, whether he has made statement earlier before the Sponsoring Authority is correct or not. But, still, the fact remains that whether the genuineness of the person, where he has made correct statement, this aspect is also examined by the detaining authority, whether he has made correct statements or not. For that further inquiry is made by the Detaining Authority before the verification of the statements of the secret witnesses, this contention is raised in ground (u) at page-13 in the petition. The answer given by the Detaining Authority in affidavit-in-reply at para-17, where the Detaining Authority has deposed that the detenu was arrested on 06.01.2003 and he was not in judicial custody at the time of recording the statements of the witnesses or verification of the same and, therefore, the contention raised by the detenu in this para is not tenable at law. Except that no answer is given in respect of the question, whether the statements made by the secret witnesses were correct or not. The law provided, this being a check upon by the Sponsoring Authority before effecting the fundamental rights, when checked the statements made before the Sponsoring Authority, then he would have taken much care before verification that whether the statements made by the secret witnesses are correct or not. The factual aspect must be verified by the Detaining Authority at the time of verification of the statements of the secret witnesses and that has also not been done in the facts of the present case. This aspect has examined by this Court [Coram : Ms.R.M.Doshit,J.] in Special Civil Application No.1692 of 1999 dated 07.07.1999, the relevant observation has been made in para-2 are as under:-

> "It is true that both the offences have been registered against the petitioner for violation of prohibition law, however, nothing on record suggest tat at the time of the raid, anything happened that would amount to breach of public order. Though the two witnesses have, on the assurance of anonymity, stated that the petitioner has been indulging into anti-social activities which are detrimental to the maintenance of public order. What is disturbing is that the credibility of the witnesses and the correctness of the said statements have not been verified. Both the statements have been recorded on 1st September, 1998, and the impugned order of detention has been made on 2nd September, 1998. This, in my view, does not leave sufficient time

> for the police to test the credibility of the witnesses and the genuineness of the contents of their statements. I have noted that the Detaining Authority has personally recorded the verification, but such formal verification is meaningless. It is the bounden duty of the police to ascertain the credibility of the witnesses. The correctness of the statements made by them. A formal verification by the Detaining Authority or any other officer would not be sufficient. Besides, the Detaining Authority has not made by counter affidavit to show whether such exercise had been undertaken or not. At least, in the present case, it is not possible to believe that the statements were duly verified, nor there is contemporaneous evidence to support the statements made by the witnesses. The Detaining Authority ought not to have relied upon the said statements, without proper verification, to record his subjective satisfaction in respect of the nefarious activities carried on by the petitioner. In absence of the said statements, there would not be any material to indicate that the petitioner's activities were prejudicial to the maintenance of public order."

7. In view of the above observation, according to my opinion, on both the grounds the order of detention is vitiated.

8. In the result, the present petition is allowed. The order of detention dated 03.05.2002 passed by the Commissioner of Police, Ahmedabad City, against the detenu Shri Kamlesh Ramjilal (Ramjilala) Sharma detained at Junagadh District Jail is hereby quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. Direct service is permitted.

[H. K. Rathod,J.]

vijay